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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RAY M. GONZALES, JR., Plaintiff and Appellant, v. PAUL AVALOS, as Trustee, etc., Defendant and Respondent.	B289444 (Los Angeles County Super. Ct. No. SP008548)

Appeal from a judgment of the Los Angeles Superior Court, Mary Thornton House, Judge. Affirmed.

Ray Gonzales, Jr., in pro persona for Petitioner and Appellant.

Valle Makoff, Jeffrey B. Valle, Susan L. Klein, and Josef D. Houska for Respondents.

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In this long-running probate matter, a wealthy woman's adult nephew sued to invalidate the final amendment to the woman's trust, which greatly reduced his inheritance. Following a 14-day bench trial, the trial court rejected the nephew's request to invalidate the amendment and to install him as the trustee, but granted the current trustee's request to award attorney fees for bringing part of his challenge in bad faith. The nephew appeals. His appellate brief is deficient in many respects, but we are able to piece together the substantive challenges he is trying to make. Because those challenges lack merit, we affirm the judgment below in its entirety.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The family*

Maria Gonzales DeYoung (Maria) has three siblings relevant to this appeal—namely, her brother Ray Gonzales Sr. (Ray Sr.), her sister Alice Avalos (Alice) and her brother Gilbert Gonzales (Gilbert). Ray Sr. has two children—petitioner Ray Gonzales Jr. (petitioner or Ray Jr.) and Terri Dudman. Alice has three children—Paul Avalos (Paul), Linda Avalos Crespo (Linda) and Lori Avalos (Lori). Linda has one son, Anthony. Gilbert has a daughter Ronaele Gonzales (Ronaele), who has a son Jesse Gonzales (Jesse).[1]

Maria married Lester DeYoung (Lester) in approximately 1949. Although their marriage was dissolved in approximately 1973, they remained close companions for the rest of their lives.

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1 For ease of reference (and consistent with the parties' practice), we refer to these family members by their first names. We mean no disrespect.

Of everyone in this close-knit family, Maria was closest to her sister Alice and her children, particularly Paul. As the "firstborn" of her nieces and nephews, Paul was the one she most favored and loved, "treat[ing him] as her own ever since he was born." In 2003, Paul moved in with Maria to care for her.

Petitioner has had contentious relationships with Maria and with Paul. As early as 1998, Maria suspected petitioner of forging documents that allowed him to borrow against and encumber a property on Mulholland Drive that she owned jointly with Ray Sr. Petitioner's relationship with Maria soured further in 2009 following petitioner's alleged failure to repay a $100,000 loan borrowed from Maria, his refusal to share profits from the sale of a property on Braddock Drive that was left to him by Maria's ex-husband Lester (in contravention of Lester's wishes), and his vehement dissatisfaction with Maria and Paul's handling of Maria's affairs. In a series of letters written in late 2010 through mid-2011, petitioner wrote to Paul, Maria and others to share his view that Paul was "stupid" and a "moron," was "pathetic" and a "doormat," was a "failure," and was an "asshole" and a "selfish, greedy, and evil son of a bitch" who was "EXTREMELY unqualified to manage" Maria's affairs. In letters written in April 2009 and December 2010, petitioner wrote to Maria to share his view that she was "rude" and a "liar," that she spouted "bullshit" and that she should be "[as]ham[ed]" of herself. Although petitioner purported to assist Maria with her estate planning between 2001 and 2008, he remarked as far back as 1987 that he "can't wait for that bitch to die so I can get my hands a hold [sic] of her money."

B. *Maria's estate planning*

1. *Initial trust*

In June 2001, Maria established the Maria Gonzales DeYoung Trust (the Trust). Maria would eventually fund the trust with all of her assets, which included three income-producing apartment complexes.

The Trust named Paul as Maria's successor trustee.

The Trust also spelled out the distribution of Trust assets upon Maria's death. Maria's tangible personal property was to be distributed pursuant to an attached schedule. The "net income" from the income-generating properties was to be divided annually—first, with "net income . . . as necessary for the . . . support and health of" Maria's two still-living siblings, Ray Sr. and Alice, and with any remaining net income to be distributed with 20 percent going to Ray Sr., 20 percent going to Alice, and the remaining 60 percent split "equally" among the six then-living nieces and nephews (that is, petitioner, Terri, Lori, Linda, Paul and Ronaele). The Trust would terminate when the two grand-nephews turned 30 years old, at which time 70 percent of the Trust would go to Anthony and 30 percent to Jesse.

The Trust also has a no contest clause.

2. *The fourth amendment to the trust*

In March 2010, Maria executed a Fourth Amendment to the Trust. By this time, Maria's sister Alice had passed away, and Maria and petitioner's relationship had deteriorated so badly that Maria had refused to see him for months.

The Fourth Amendment repeals the First, Second and Third Amendments Maria had previously adopted. It also modifies several terms of the Trust. Like the original Trust, the Fourth Amendment names Paul as the successor trustee. But

the Amendment alters the distribution of Trust assets upon Maria's death. Like the Second and Third Amendments before it, the Fourth Amendment leaves all of Maria's cash to Paul. The Fourth Amendment directs that two parcels of property be distributed upon Maria's death, one to Paul (subject to allowing Ray Sr. to live in the property's home rent free for the rest of his life) and a second to Paul and Linda. Most pertinent, the Fourth Amendment specifies that the "net income" of the income-producing properties is to be distributed "equally" and "annually" to Ray Sr., Linda, Paul and Anthony until Ray Sr. dies, at which point the Trust's assets are to be divided "equally" among Linda, Paul and Anthony. The Fourth Amendment also amends the no contest clause.

3. *Maria's death*

Maria passed away on January 13, 2011.

II. Procedural Background

A. *Pleadings*

1. *Complaint*

In June 2011, petitioner filed a verified petition to (1) invalidate the Fourth Amendment due to Maria's lack of capacity at the time of its execution as well as Paul's undue influence and fraud in making "false representations to [Maria]," (2) immediately suspend Paul as trustee, and (3) remove Paul as trustee and name petitioner as his replacement.

No other family member joined petitioner in his petition.

2. *Response and cross-complaint*

As trustee, Paul responded on behalf of the Trust. The trust asserted that petitioner had failed to join the Trust's other beneficiaries and that, absent those indispensable parties, jurisdiction was inappropriate. The Trust also sought to recover

attorney fees under Probate Code section 15642, subdivision (d) on the theory that petitioner's claim to remove Paul as trustee was prosecuted in bad faith.

B. *Trial*

The matter proceeded to a 14-day bench trial held on non-contiguous days between July 2016 and April 2017. The parties called 13 witnesses, and admitted 66 exhibits.

C. *Statement of decision*

1. *Tentative decision*

The trial court issued a tentative, 50-page statement of decision in August 2017.

a. Jurisdiction

The court ruled that it lacked jurisdiction over the petition because petitioner had not joined several indispensable parties—namely, the Trust's other beneficiaries who "all stand to be impacted by a ruling" in petitioner's favor.

b. Merits of the petition

Moving on to the merits of the petition, the court found that petitioner had not rebutted the baseline presumption that Maria was competent at the time she executed the Fourth Amendment. Maria's doctor, her attorney, and two long-time friends all testified that Maria was mentally "sharp" in March 2010. The court found this testimony persuasive, and was "unpersua[ded]" by contrary testimony offered by one of petitioner's long-time friends. The court rejected petitioner's further argument that Maria lacked capacity because her reasons for disliking him were "delusional," chiefly because Maria's grievances against him—namely, that (1) petitioner had not repaid the $100,000 loan, (2) petitioner had deceptively substituted himself for his father as a co-owner with her on the Mulholland Drive property, (3)

petitioner had persuaded Maria's late ex-husband Lester to leave petitioner the Braddock Drive property and kept the proceeds from its sale despite Lester's widely-known desire to have them shared with all his nieces and nephews, and (4) petitioner had written "mean" and "nasty" letters to Maria—all had a "basis in reality."

The court further found that Paul had not exerted undue influence over Maria. Although the court concluded that Paul had a "confidential relationship" with Maria, the court also found that Paul had not actively participated in the drafting of the Fourth Amendment and did not "unduly" "benefit" from the Amendment (given that Maria's estate plan had *always* favored Paul over the other nieces and nephews).

The court lastly found that Paul did not commit fraud by misrepresenting facts to Maria. While testifying, petitioner himself admitted that he and his father, Ray Sr., had previously determined that the misrepresentations he alleged Paul made about petitioner came not from Paul, but from Maria herself. If Paul made no false misrepresentations, the court reasoned, Paul did not commit actual fraud.

In ruling on these claims, the court determined that the propriety of Paul's acts in administering the Trust after Maria's death were irrelevant.

c. Request for attorney fees

The court concluded that the Trust was entitled to attorney fees because petitioner, in seeking to remove Paul as trustee, had acted in "bad faith" and because Paul's removal "[would be] contrary to" Maria's intent. More specifically, the court found that petitioner had filed this action in bad faith because (1) he did so to forestall collection on the unpaid $100,000 debt, (2) he could

get no other family members to join his lawsuit, (3) he had a longstanding "vendetta against [Paul]," (4) he filed his lawsuit knowing that doing so would deplete the trust assets he purportedly sought to protect for his fellow family members, and, critically, (5) he persisted in the lawsuit despite admitting on the stand that he previously knew Paul had not lied to Maria about petitioner, and did so to punish Paul for his alleged mishandling of the trust's assets.

2. *Objections*

Petitioner raised four objections to the tentative statement of decision: (1) the trial court "improperly limited the scope" of the trial as to his fraud and undue influence claims by excluding evidence of Paul's alleged mismanagement of another trust, of the LLCs, and of this Trust following Maria's death, (2) the trial court erred in not finding that Paul was conclusively disqualified to inherit because he "transcribed" the Fourth Amendment, (3) the trial court's finding that Paul did not unduly benefit from the Fourth Amendment was "[a]mbiguous [b]ecause [t]here [w]as [e]vidence [t]o [t]he [c]ontrary," and (4) the trial court's finding that petitioner acted in bad faith was objectionable.

3. *Final statement of decision*

The trial court adopted its tentative statement of decision as its final statement, without any changes.[2]

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2 The court did not at that time resolve the *amount* of attorney fees to be awarded, and the post-judgment record is not included in the record on appeal.

D. *Judgment and appeal*

Following the entry of judgment, petitioner filed this timely appeal.

DISCUSSION

In his opening brief,[3] petitioner lists 17 different "errors of the court." In his discussion of these errors, petitioner provides minimal citation to legal authority and makes the vast majority of his factual assertions without any citation to the record. As such, he has waived nearly all of his arguments. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*) [argument not supported with "reasoned argument" is waived]; *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal.App.4th 64, 79 [argument not supported with citations to the record is waived].) We are nevertheless able to understand the gist of his arguments and will evaluate them in light of our independent review of the totality of the record.

I. Jurisdiction

If a trial court determines that a particular person or entity is "indispensable" to the resolution of a pending action, and if the court can join that person or entity without depriving itself of

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3 Petitioner also sought leave to file a reply brief 43 days late. However, his motion for leave to file proffered as the primary reason for the delayed filing his desire to present to this court "new evidence" never presented to the trial court. Because we cannot consider new *arguments* for the first time in a reply brief on appeal (*Varjabedian v. Madera* (1977) 20 Cal.3d 285, 295, fn. 11), we certainly cannot consider new *facts* for the first time in a reply brief on appeal. Doing so would be manifestly unfair to the opposing party. (*Id.*) We accordingly consider only petitioner's opening brief.

jurisdiction, the court has the discretion to dismiss the action if, "in equity and good conscience," it finds that the action should not proceed without that person or entity because, among other reasons, its absence would "as a practical matter impair or impede [the person or entity's] ability to protect [its] interest." (Code Civ. Proc., § 389, subds. (a) & (b).) We review a trial court's dismissal of an action for failure to join an indispensable party for an abuse of discretion. (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1179.)

In this case, the trial court abused its discretion in dismissing petitioner's claims for his failure to join the other beneficiaries of the Trust. As to petitioner's claims seeking to suspend and remove Paul as trustee (and Paul's complementary request for attorney fees based on a "bad faith" claim for removal), the other beneficiaries were not indispensable parties. (*Bowles v. Superior Court* (1955) 44 Cal.2d 574, 584 ["the presence of all the beneficiaries of a trust is not indispensable to the removal of a trustee"] (*Bowles*); *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1026-1027 [same].) As to petitioner's remaining claim seeking to invalidate the Fourth Amendment, the other beneficiaries were indispensable parties because that invalidation would have altered their "share in [Maria's] . . . trust fund." (*Bowles,* at p. 583; *First Nat'l Trust & Sav. Bank v. Superior Court of Los Angeles County*(1942) 19 Cal.2d 409, 414 ["the beneficiaries of a trust are indispensable parties to an action involving conflicting rights between themselves . . ."].) Although the failure to join indispensable parties was, prior to 1971, deemed to deprive a trial court of its fundamental jurisdiction to hear a claim (e.g., *Guerra v. Packard* (1965) 236 Cal.App.2d 272, 294), courts have construed the 1971 amendment

to this statute to make dismissal an equitable consideration that does not deprive the court of its fundamental jurisdiction to hear the matter and to bind the parties *who are present in the action*. (*Kraus v. Willow Park Golf Course* (1977) 73 Cal.App.3d 354, 368; *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1197.) Consequently, petitioner's failure to join the other beneficiaries did not deprive the court of jurisdiction to adjudicate the validity of the Fourth Amendment vis-à-vis Paul. However, the court's error in this regard is of no consequence because, as discussed next, the court properly dismissed petitioner's claims on their merits. (*People v. Watson* (1956) 46 Cal.2d 818, 835.)

II. Evidentiary Rulings

A. *Exclusion of evidence*

Petitioner argues that the trial court erred in declining to admit evidence that (1) Paul mismanaged a different trust (namely, the Avalos Family Trust), (2) Paul mismanaged the LLCs that own the three income-producing apartment complexes, and (3) Paul mismanaged the Trust after Maria's death. Because none of this alleged mismanagement is pled in the petition (which, as explained above, deals solely with the validity of the Fourth Amendment), and because the pleadings delineate what is relevant for a proceeding (*Rainer v. Community Memorial Hosp.* (1971) 18 Cal.App.3d 240, 253 ["Evidence which is not pertinent to the issues raised by the pleadings is immaterial"]), petitioner's objection to the exclusion of this evidence presents two subsidiary questions: (1) did the trial court err in not amending the petition to conform to the proof at trial, and if so, (2) did the court err in not admitting evidence of Paul's mismanagement in other endeavors? We review both subsidiary questions for an abuse of

discretion. (*Trafton v. Youngblood* (1968) 69 Cal.2d 17, 31 [amendment to conform to proof]; *People v. Powell* (2018) 5 Cal.5th 921, 961 [evidentiary rulings].)

1. *Amendment to conform to proof*

A trial court has the power to conform the pleadings to the evidence presented at trial, and doing so is generally favored because doing so furthers "'justice and avoid[s] further useless litigation.' [Citation.]" (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 909; see generally, Code Civ. Proc., § 469.) In deciding whether to allow a mid-trial amendment of the pleadings to conform to proof, a court should consider "'(1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment.'" (*Garcia*, at p. 910.) However, any such amendment must, at a minimum, be "'based upon the same general set of facts as those upon which the'" claim "'as originally pleaded was grounded.'" (*Ibid.*; *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378; *Simone v. McKee* (1956) 142 Cal.App.2d 307, 314.) Because the petition in this case was confined solely to the validity of the Fourth Amendment, the proffered amendment regarding Paul's management of other trusts, other entities, and of the Trust at other times rests on an entirely different "set of facts"; for that reason, the court did not abuse its discretion in refusing to amend the petition.

2. *Admissibility generally*

Even if we assume for the sake of argument that the trial court should have amended the petition, the evidence petitioner seeks to admit—that is, evidence that Paul had engaged in mismanagement of other entities or at other times—is still within a trial court's discretion to exclude. It is inadmissible to prove

Paul's propensity to mismanage (Evid. Code, §§ 1101, subd. (a), 1104), inadmissible to prove his intent because Paul's intent to mismanage other matters at other times does not speak to his intent or actions regarding the Trust (Evid. Code, § 1101, subd. (b); *People v. Edwards* (2013) 57 Cal.4th 658, 711 ["'sufficient[] similar[ity]'" required]), and inadmissible to impeach him because it involves specific instances of conduct (Evid. Code, § 787).

B. *Admission of evidence*

Petitioner argues that the trial court erred in admitting evidence that he failed to repay Maria $100,000 she loaned him in 2008. We review this ruling for an abuse of discretion (*Powell*, *supra*, 5 Cal.5th at p. 961), and conclude there was no abuse.

There is no shortage of proof regarding the obligation and petitioner's failure to repay it. It is undisputed that he borrowed $100,000 from Maria in 2008, and memorialized it in a promissory note in 2009. It is undisputed that petitioner never repaid the note. And petitioner offered a number of inconsistent explanations for his failure to repay—namely, that (1) he only had to repay Maria if he refinanced another parcel of property, and he never refinanced that property and/or he never acquired any equity in that property; and (2) he agreed to repay Maria after cashing out a loan on a different property, but alternatively elected not to repay her when he received that money because (a) she owed him money from the LLCs managing the apartment complexes; (b) he was upset with her and Paul for removing him as a successor co-trustee; and (c) he was concerned that Paul would misappropriate the money if it were repaid. More to the point, this obligation and petitioner's failure to repay it is relevant to (1) prove why Maria would execute an amendment

disinheriting petitioner for reasons other than her alleged incapacity or any undue influence by Paul, and (2) petitioner's credibility.

III. Substantial Evidence

A trial court's ultimate findings regarding mental capacity, undue influence and fraud are reviewed for substantial evidence. (*Estate v. Fritschi* (1963) 60 Cal.2d 367, 369 [testamentary capacity]; *Butler v. LeBouef* (2016) 248 Cal.App.4th 198, 208 [undue influence, fraud].) Under this standard, we must affirm if the record supports the court's findings when construed in the light most favorable to those findings. (*JKH Enterprises, Inc v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1058.)

A. *Mental capacity*

A person is presumed to have the requisite competency to make a testamentary decision. (Prob. Code, § 810.) However, that presumption can be rebutted by a showing that she (1) is "deficient" in terms of her (a) "[a]lertness and attention," (b) "[i]nformation processing," (c) "[t]hought processes," or (d) "[a]bility to modulate mood and affect," *and* (2) "lacks the capacity to communicate," "understand and appreciate" (a) "[t]he rights, duties, and responsibilities created by, or affected by the [testamentary] decision [at issue]," (b) "[t]he probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision," and (c) "[t]he significant risks, benefits and reasonable alternatives involved in the decision." (Prob. Code, §§ 811, 812.) As the statutory text indicates, the requisite degree of mental capacity exists along a "sliding scale" that varies depending on the nature of the testamentary decision at issue. (*Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1351-1352;

Anderson v. Hunt (2011) 196 Cal.App.4th 722, 730.) Where, as here, the decision involves the mere "reallocat[ion of] the percentage of the trust estate among beneficiaries," the decision is akin to making a "will or codicil" and thus should be "evaluated under the lower [mental] capacity standard" for such decisions. (*Lintz*, at p. 1352.)

Substantial evidence supports the trial court's finding that Maria had the mental capacity to execute the Fourth Amendment that reallocated the residual distribution of her estate between her nieces, nephews and their offspring. Maria's doctor, her lawyer and two long-time friends all testified that they had spoken with her in the months and weeks immediately preceding her execution of the Fourth Amendment, and adjudged her to be "alert," "clear mind[ed]," and to "underst[and] exactly what she was doing" vis-à-vis the Fourth Amendment. Indeed, Maria's doctor performed a neurological examination on her just two months prior to her death, and, despite advanced physical illness, the tests indicated that she remained "alert" and "oriented" to the maximum extent of diagnostic criteria.

B. *Undue influence*

A trust instrument may be invalidated if it is the product of undue influence—that is, if it is the product of "pressure brought to bear directly on the testamentary act" that is "sufficient to overcome the testator's free will." (*Rice v. Clark* (2002) 28 Cal.4th 89, 96; Prob. Code, § 6104.) A party seeking to invalidate such an instrument ordinarily bears the burden of proving, by clear and convincing evidence, that the instrument was the product of undue influence. (*Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 545.) However, undue influence will be presumed in certain situations. Under Probate Code section

21380, undue influence will be presumed—and *conclusively* so—if the person who receives a benefit under the instrument is either the person who "drafted" the instrument or a fiduciary who "transcribed" the instrument. (Prob. Code, § 21380, subds. (a)(1), (a)(2), (c); former Prob. Code, § 21350, subd. (a)(4).)[4] Under the common law, undue influence will be presumed—but only *rebuttably* so—if "(1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in procuring the instrument's preparation or execution; and (3) the person would benefit unduly by the testamentary instrument." (*Rice*, at p. 97.)

Substantial evidence supports the trial court's finding that the Fourth Amendment is not the product of Paul's undue influence.

No conclusive presumption attaches because a person drafts or "transcribe[s]" an instrument when he "directly participate[s] in the instrument's physical preparation" (*Rice*, *supra*, 28 Cal.4th at p. 103) and because substantial evidence supports the finding that Paul neither drafted nor transcribed the Fourth Amendment. Maria's attorney testified that he communicated *with Maria* regarding the content of the Fourth Amendment, and that Paul had no role in spelling out its content. Paul's sole role was to transcribe the letters that Maria sent to the attorney as part of their back and forth correspondence. Petitioner insists that Maria was completely blind by the time

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4 Probate Code section 21380 applies to any testamentary instrument that became irrevocable after January 1, 2011. (Prob. Code, § 21392, subd. (a).) The Trust became irrevocable 12 days later—on January 13, 2011—the day Maria died.

she executed the Fourth Amendment and thus that the attorney's and Paul's testimony that Paul had little involvement is not credible; but Maria's blindness, while certainly meaning that Maria could not read or write her own letters, does not mean that Paul unduly influenced her. It is not our place to reweigh the credibility of witnesses. (*Do v. Regents of University of California* (2013) 216 Cal.App.4th 1474, 1492.)

No rebuttable presumption attaches either. Although Paul was in a confidential relationship with Maria, a "confidential relationship alone is not sufficient" to trigger the presumption. (*Estate of Niquette* (1968) 264 Cal.App.2d 976, 983.) Substantial evidence supports the trial court's finding that neither of the remaining two triggers for the presumption exists. For the reasons described above, the record supports the finding that Paul had no role in drafting or transcribing the Fourth Amendment. And the record supports the finding that Paul did not "unduly benefit" from the Fourth Amendment. A person "unduly benefit[s]" when he receives a bequest that is "unwarranted, excessive, inappropriate, unjustifiable or improper" in relation to the "obvious object of the decedent's testamentary disposition." (*Estate of Auen* (1994) 30 Cal.App.4th 300, 311-312.) Here, Maria had long regarded Paul as her "favorite" and the terms of her original Trust and the prior three amendments all favored Paul; her decision to favor Paul in the Fourth Amendment is entirely consistent with the "obvious object" of Maria's testamentary disposition—as petitioner himself repeatedly acknowledged at trial. Indeed, the only evidence that Paul successfully exerted any influence over Maria in drafting the Fourth Amendment's content was when he convinced her to

retain Ray Sr. as a beneficiary—a move that *decreased* Paul's inheritance.

For the same reasons, petitioner also did not carry his burden of establishing, by clear and convincing evidence, that Paul exerted undue influence over Maria. Perhaps most tellingly, petitioner testified that he learned—prior to filing his lawsuit—that the falsehoods he believed Paul told Maria in order to unduly influence her were, in fact, falsehoods that *Maria herself* came up with, and not anything Paul said.

C. *Actual fraud*

A trust instrument may also be invalidated if it is the product of actual fraud—that is, if it is the product of "false representation[s] . . . of a material fact," made by someone who knows the truth, made with the intent to induce reliance, and resulting in damage. (*Reed v. King* (1983) 145 Cal.App.3d 261, 264.) This is the sole type of fraud petitioner alleged in the operative petition. Substantial evidence supports the trial court's finding that Paul did not commit any actual fraud for the same reasons that Paul did not unduly influence Maria—chiefly, that the allegedly false representations petitioner initially attributed to Paul were, in actuality, never made by Paul.

D. *Petitioner's arguments*

Petitioner spells out dozens of alleged errors in the trial court's findings, but they fall into two broad categories: (1) complaints that the trial court incorrectly weighed the evidence, and (2) complaints that the trial court made incorrect credibility findings. Neither category is cognizable where, as here, we are reviewing solely for substantial evidence. (*People v. Prunty* (2015) 62 Cal.4th 59, 89 ["We do not reweigh evidence or reevaluate a witness's credibility."].)

IV. Attorney Fees

A trial court has the discretion to award attorney fees against a party who files a petition to remove a trustee if (1) "the petition . . . was filed in bad faith" and (2) "removal" of the trustee "would be contrary to the settlor's intent." (Prob. Code, § 15642, subd. (d).) We review a trial court's award of such fees for substantial evidence. (*Cypress Semiconductor Corp. v. Maxim Integrated Products, Inc.* (2015) 236 Cal.App.4th 243, 260.) Although the term "bad faith" is not specifically defined under the pertinent statute, "bad faith" elsewhere can be (1) objective, which is when there is no evidence to support the claim (*SASCO v. Rosendin Electric, Inc.* (2012) 207 Cal.App.4th 837, 847), or (2) subjective, which is when the party acts with an "improper motive" to "caus[e] unnecessary delay" or "harass[] the opposing side" (*Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 34; *Gemini Aluminum Corp. v. Cal. Custom Shapes* (2002) 95 Cal.App.4th 1249, 1263).

Substantial evidence supports the trial court's findings that petitioner acted in bad faith and contrary to Maria's intent in filing his claim to remove Paul as the trustee.[5] It is undisputed that Maria's intent in every iteration of the Trust was to name Paul as her successor trustee, so removing him is contrary to her

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5 At oral argument, Paul for the first time requested that this court impose sanctions against Petitioner for taking this appeal in bad faith. This argument was waived because it was not raised until oral argument. (*People v. Crow* (1993) 6 Cal.4th 952, 960, fn. 7.) In any event, we do not find that the substantial evidence challenges raised in this appeal are "'totally and completely without merit,'" and so decline to issue sanctions. (*Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 826.)

intent. There was also substantial evidence to support both types of bad faith. There is evidence of *objective* bad faith because, for the reasons described above, petitioner's removal claim—which was grounded entirely in Paul's malfeasance in allegedly procuring the Fourth Amendment—is completely without merit. Also, no other member of the family would join petitioner, and one beneficiary excised by the Fourth Amendment went so far as to characterize petitioner's lawsuit as "a witch-hunt for money." There is also evidence of *subjective* bad faith in light of the overwhelming evidence of petitioner's animosity toward both Paul and Maria.

Petitioner offers what boil down to three arguments against this conclusion. First, he points to contrary evidence in the record. But, as noted above, that is irrelevant under substantial evidence review. Second, he argues that Paul committed malfeasance in managing the LLCs, other trusts and the Trust itself after Maria's death. But *Paul's* incompetence or malicious motive is irrelevant to *petitioner's* motive. Third, petitioner insists that we should ignore the letters he sent Paul and Maria. But they are properly part of the record.

V. Further Arguments

Petitioner lastly argues that (1) we should reverse the trial court's dismissal of his petition because the court labored under "misconception[s]" and "misguided" reasoning and was "personally offended" by his arguments, and (2) we should overturn the trial court's separate order denying his request for a temporary restraining order filed after trial (but before the trial court's dismissal of his petition). Petitioner's global attack on the trial court does not impeach the court's reasoning or its result. And we must decline petitioner's invitation to reach the denial of

the temporary restraining order because he provides no reasoned argument for doing so (*Cahill*, *supra*, 194 Cal.App.4th at p. 956) and because it is outside the scope of the notice of appeal (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846 ["Our jurisdiction is 'limited in scope to the notice of appeal and the judgment appealed from. [Citation.]'"]).

Paul urges that petitioner has forfeited all of his arguments because he only raised four objections to the tentative statement of decision. Citing *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, Paul asserts that petitioner may not raise any issue on appeal not raised in his objections to the tentative decision. Paul misreads *Arceneaux*. *Arceneaux* did no more than apply the statutory mandate that a party's failure to raise objections to a statement of decision means that the opposing party can still rely on the doctrine of "implied findings." (*Id.* at pp. 1133-1134; Code Civ. Proc., § 634.) *Arceneaux* did not purport to erect a rule that the failure to object to a statement of decision amounts to a forfeiture of the issue on appeal.

DISPOSITION

The judgment is affirmed. Paul is entitled to his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P.J.
ASHMANN-GERST

_____, J.
CHAVEZ